

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

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August 6, 1985

Suzanne B. Gifford  
Assistant General Counsel  
Southern California Rapid Transit  
District  
425 South Main Street  
Los Angeles, CA 90013

Re: Your Request for Advice  
Our File No. A-85-133

Dear Ms. Gifford:

This letter is sent in response to your request for advice on behalf of Southern California Rapid Transit District ("District") concerning the financial disclosure obligations of District consultants, under the Political Reform Act.<sup>1/</sup> More specifically, you asked whether the attorney retained to represent the District in three separate condemnation actions pertaining to the Los Angeles Metro Rail Project should file financial disclosure statements as a consultant under the District's Conflict of Interest Code. Mr. Richard Del Guercio of Demetriou, Del Guercio and Lovejoy who is under contract to provide this representation has inquired whether he is a consultant covered by the Conflict of Interest Code.

### QUESTION

Does the position of District Consultant in the Conflict of Interest Code include an attorney who is retained to represent the District in certain condemnation actions?

### ANSWER

No.

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<sup>1/</sup> The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code.

### DISCUSSION

In its conflict of interest code, each agency must designate those positions that involve the making of, or participation in, decisions which may foreseeably affect any financial interest. Section 87302. Both the definitions of "designated employee" and "public official" in the Act include any consultants to an agency who make or participate in such agency decisions. Sections 82019 and 82048.

A "consultant," within the meaning of the Act, includes "any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency...." 2 Cal. Adm. Code Section 18700(a)(2). This term does not include, however, a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

2 Cal. Adm. Code Section  
18700(a)(2)(A) and (B)

When an attorney is hired under a contract to perform legal services for a specific matter, he ordinarily comes within this exception. Under such circumstances, the attorney uses his own judgment and expertise to render professional services, and his decisions are not subject to day-to-day review or direction by the District.<sup>2/</sup> Handling a particular piece of litigation for an agency usually falls within this exception. Therefore, Mr. Del Guercio is not a consultant covered by the Act or the District's Conflict of Interest Code when he represents the District in certain condemnation actions. Accordingly, he is not required to make financial disclosure pursuant to the Code.

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<sup>2/</sup> This contrasts with an attorney's being retained to advise the District on general governmental decisions on a continuing basis. Under these circumstances, the attorney would be a consultant within the meaning of the Act and Section 18700.

Ms. Suzanne B. Gifford  
August 6, 1985  
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Please feel free to contact me if I can be of further assistance.

Sincerely,

*Diane Maura Fishburn*

Diane Maura Fishburn  
Counsel  
Legal Division

DMF:nwm  
cc: Richard Del Guercio



Suzanne B. Gifford  
Assistant General Counsel

June 7, 1985

Ms. Diane Fishburn  
Staff Counsel  
Fair Political Practices Commission  
Box 807  
Sacramento, California 95804

Dear Ms. Fishburn:

Re: Request for Opinion

The Board of Supervisors of the County of Los Angeles, on October 23, 1984 approved revisions to the Southern California Rapid Transit District ("District") Conflict of Interest Code and to Exhibit B to that Code, the list of positions required to file Economic Disclosure Statements. Non-staff attorneys are included in the list of consultants required to file SEI's. They are included in disclosure categories 1, 2, and 3, listed in Exhibit A to the Code, which we have previously sent to you.

The law firm of Demetriou, Del Guercio & Lovejoy has been hired by the District to represent it in three separate condemnation actions pertaining to the Los Angeles Metro Rail Project. A copy of the agreement with the firm is enclosed.

Mr. Del Guercio of the firm was requested to complete a Form 730. He has inquired whether he is covered under the definition of consultant set forth in Section 18700(a)(2) of Title 2 of the California Administrative Code.

Because Mr. Del Guercio and numerous other firms will continue to be engaged to represent the District in eminent domain proceedings as the project progresses over the next several years -- assuming federal funding is received -- and because the effect and meaning of Sections 18700(a)(2)(A) and (B) excluding persons from the consultant category are unclear, we are requesting your advice and opinion as to whether Mr. Del Guercio or other members of the firm are required to file a Statement of Economic Interests.

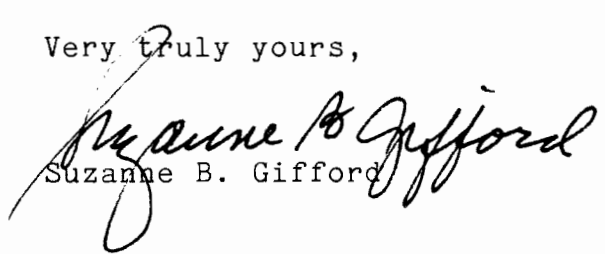
Ms. Diane Fishburn

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June 7, 1985

Your help will be greatly appreciated.

Very truly yours,

  
Suzanne B. Gifford

Enclosures

cc: Richard Del Guercio, Esq.